

AMENDED IN SENATE AUGUST 17, 2011

AMENDED IN SENATE JUNE 28, 2011

AMENDED IN SENATE JUNE 7, 2011

AMENDED IN ASSEMBLY APRIL 7, 2011

AMENDED IN ASSEMBLY MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 313

Introduced by Assembly Member Monning

February 9, 2011

An act to amend ~~Section~~ *Sections 1569.38 and 1569.682* of, ~~and to add Section 1569.336 to,~~ the Health and Safety Code, relating to residential care facilities for the elderly.

LEGISLATIVE COUNSEL'S DIGEST

AB 313, as amended, Monning. Residential care facilities for the elderly.

(1) Existing law, the California Residential Care Facilities for the Elderly Act, provides for the licensure of residential care facilities for the elderly by the State Department of Social Services. A violation of the act is a misdemeanor.

Existing law requires the department to notify affected placement agencies and the Office of the State Long-Term Care Ombudsman, as defined, whenever the department substantiates that a violation has occurred that poses a serious threat to the health and safety of any resident when the violation results in the assessment of any penalty or causes an accusation to be filed for the revocation of a license.

This bill would require a licensed residential care facility for the elderly to provide a prescribed written notice to a resident, the resident's responsible party, if any, and the local long-term care ombudsman under specified conditions. *The bill would prescribe civil penalties for violation of specified provisions.*

(2) Existing law requires a licensee of a licensed residential care facility for the elderly to take all reasonable steps to transfer affected residents safely as a result of the forfeiture of a license or the change of use of the facility pursuant to the department's regulations.

This bill would require the licensee to take all reasonable steps to transfer affected residents safely as the result of the revocation of the license.

(3) By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1569.336 is added to the Health and~~
2 ~~Safety Code, to read:~~
3 ~~1569.336. (a) A licensed residential care facility for the elderly~~
4 ~~shall provide written notice to a resident, the resident's responsible~~
5 ~~party, if any, and the local long-term care ombudsman, within 10~~
6 ~~days from the occurrence of either of the following events:~~
7 ~~(1) The department commences proceedings to suspend or~~
8 ~~revoke the license of the facility pursuant to Section 1569.50.~~
9 ~~(2) A criminal action that relates to the health or safety of the~~
10 ~~residents is brought against the licensed residential care facility.~~
11 ~~(b) The notice provided to a resident and the resident's~~
12 ~~responsible party, if any, shall include the name and contact~~
13 ~~information for the local long-term care ombudsman and for the~~
14 ~~Community Care Licensing Division of the department with a~~
15 ~~statement that directs the resident or the resident's responsible~~

1 party to contact the division for information on the license status
2 of the facility.

3 ~~(e) The notice, described in subdivision (a), provided to a~~
4 ~~resident and the resident's responsible party, if any, shall include~~
5 ~~the reason given for the commencement of proceedings to suspend~~
6 ~~or revoke the license of the facility, or the reason given for criminal~~
7 ~~action brought against the licensed residential care facility.~~

8 ~~(d) Upon providing the notice described in subdivision (a), the~~
9 ~~licensed residential care facility shall also post a written notice, in~~
10 ~~at least 14-point type, in a conspicuous location in the facility, that~~
11 ~~may include where the mail boxes are located, where the facility~~
12 ~~license is posted, or any other easily accessible location in the~~
13 ~~facility. The posting shall include all of the following information:~~

14 ~~(1) The date of the notice.~~

15 ~~(2) The name of the residential care facility for the elderly.~~

16 ~~(3) A statement that a copy of the most recent licensing report~~
17 ~~prepared by the department, and any additional reports of facility~~
18 ~~evaluation visits, within the preceding 12 months, may be obtained~~
19 ~~at the facility.~~

20 ~~(4) The name and telephone number of the contact person~~
21 ~~designated by the Community Care Licensing Division of the~~
22 ~~department to provide information on the license status of the~~
23 ~~facility.~~

24 ~~(e) The notice required to be posted pursuant to subdivision (d)~~
25 ~~shall remain posted until the deficiencies that gave rise to the notice~~
26 ~~are resolved.~~

27 ~~(f) A civil penalty levied for a violation of this section pursuant~~
28 ~~to Section 1569.49 shall be in addition to any civil penalty levied~~
29 ~~for the underlying violation that gives rise to the notice~~
30 ~~requirements of this section.~~

31 ~~(g) For purposes of this section, "responsible party" means an~~
32 ~~individual, including the patient's relative, health care surrogate~~
33 ~~decision maker, or a placement agency, who assists the resident~~
34 ~~in placement or assumes varying degrees of responsibility for the~~
35 ~~well-being of the resident, as designated by the resident in writing.~~

36 *SECTION 1. Section 1569.38 of the Health and Safety Code*
37 *is amended to read:*

38 1569.38. (a) Each residential care facility for the elderly shall
39 place in a conspicuous place copies of all licensing reports issued
40 by the department within the preceding 12 months, and all licensing

1 reports issued by the department resulting from the most recent
2 annual visit of the department to the facility. This subdivision shall
3 not apply to any portion of a licensing report referring to a
4 complaint that was found by the department to be unfounded or
5 unsubstantiated. The facility, during the admission process, shall
6 inform the resident and the resident's responsible person in writing
7 that licensing reports are available for review at the facility, and
8 that copies of licensing reports and other documents pertaining to
9 the facility are available from the appropriate district office of the
10 department. The facility shall provide the telephone number and
11 address of the appropriate district office.

12 *(b) A licensed residential care facility for the elderly shall*
13 *provide written notice to a resident, the resident's responsible*
14 *party, if any, and the local long-term care ombudsman, within 10*
15 *days from the occurrence of either of the following events:*

16 *(1) The department commences proceedings to suspend or*
17 *revoke the license of the facility pursuant to Section 1569.50.*

18 *(2) A criminal action that relates to the health or safety of the*
19 *residents is brought against the licensed residential care facility.*

20 *(c) The notice provided to a resident and the resident's*
21 *responsible party, if any, shall include the name and contact*
22 *information for the local long-term care ombudsman and for the*
23 *Community Care Licensing Division of the department with a*
24 *statement that directs the resident or the resident's responsible*
25 *party to contact the division for information on the license status*
26 *of the facility.*

27 *(d) The notice, described in subdivision (b), provided to a*
28 *resident and the resident's responsible party, if any, shall include*
29 *the reason given for the commencement of proceedings to suspend*
30 *or revoke the license of the facility, or the reason given for criminal*
31 *action brought against the licensed residential care facility.*

32 *(e) Upon providing the notice described in subdivision (b), the*
33 *licensed residential care facility shall also post a written notice,*
34 *in at least 14-point type, in a conspicuous location in the facility,*
35 *that may include where the mail boxes are located, where the*
36 *facility license is posted, or any other easily accessible location*
37 *in the facility. The posting shall include all of the following*
38 *information:*

39 *(1) The date of the notice.*

40 *(2) The name of the residential care facility for the elderly.*

1 (3) *A statement that a copy of the most recent licensing report*
2 *prepared by the department, and any additional reports of facility*
3 *evaluation visits, within the preceding 12 months, may be obtained*
4 *at the facility.*

5 (4) *The name and telephone number of the contact person*
6 *designated by the Community Care Licensing Division of the*
7 *department to provide information on the license status of the*
8 *facility.*

9 (f) *The notice required to be posted pursuant to subdivision (e)*
10 *shall remain posted until the deficiencies that gave rise to the*
11 *notice are resolved.*

12 (g) *A licensee who fails to comply with the requirements of*
13 *subdivision (b) or (c) shall be liable for civil penalties in the*
14 *amount of one hundred dollars (\$100) for each day of the failure*
15 *to provide notification as required in this section. The total civil*
16 *penalty for each day shall not exceed one hundred dollars (\$100)*
17 *regardless of the number of notices that the licensee fails to send*
18 *that day. The total civil penalty for a continuous violation of*
19 *subdivision (b) or (c) shall not exceed five thousand dollars*
20 *(\$5,000).*

21 (h) *For purposes of this section, “responsible party” means an*
22 *individual, including the patient’s relative, health care surrogate*
23 *decisionmaker, or a placement agency, who assists the resident*
24 *in placement or assumes varying degrees of responsibility for the*
25 *well-being of the resident, as designated by the resident in writing.*

26 SEC. 2. Section 1569.682 of the Health and Safety Code is
27 amended to read:

28 1569.682. (a) A licensee of a licensed residential care facility
29 for the elderly shall, prior to transferring a resident of the facility
30 to another facility or to an independent living arrangement as a
31 result of the forfeiture of a license, as described in subdivision (a),
32 (b), or (f) of Section 1569.19, change of use of the facility pursuant
33 to the department’s regulations, or revocation of a license, take all
34 reasonable steps to transfer affected residents safely and to
35 minimize possible transfer trauma, and shall, at a minimum, do
36 all of the following:

37 (1) Prepare, for each resident, a relocation evaluation of the
38 needs of that resident, which shall include both of the following:

39 (A) Recommendations on the type of facility that would meet
40 the needs of the resident based on the current service plan.

1 (B) A list of facilities, within a 60-mile radius of the resident's
2 current facility, that meet the resident's present needs.

3 (2) Provide each resident or the resident's responsible person
4 with a written notice no later than 60 days before the intended
5 eviction. The notice shall include all of the following:

6 (A) The reason for the eviction, with specific facts to permit a
7 determination of the date, place, witnesses, and circumstances
8 concerning the reasons.

9 (B) A copy of the resident's current service plan.

10 (C) The relocation evaluation.

11 (D) A list of referral agencies.

12 (E) The right of the resident or resident's legal representative
13 to contact the department to investigate the reasons given for the
14 eviction pursuant to Section 1569.35.

15 (3) Discuss the relocation evaluation with the resident and his
16 or her legal representative within 30 days of issuing the notice of
17 eviction.

18 (4) Submit a written report of any eviction to the licensing
19 agency within five days.

20 (5) Upon issuing the written notice of eviction, a licensee shall
21 not accept new residents or enter into new admission agreements.

22 (6) (A) For paid preadmission fees in excess of five hundred
23 dollars (\$500), the resident is entitled to a refund in accordance
24 with all of the following:

25 (i) A 100-percent refund if preadmission fees were paid within
26 six months of notice of eviction.

27 (ii) A 75-percent refund if preadmission fees were paid more
28 than six months but not more than 12 months before notice of
29 eviction.

30 (iii) A 50-percent refund if preadmission fees were paid more
31 than 12 months but not more than 18 months before notice of
32 eviction.

33 (iv) A 25-percent refund if preadmission fees were paid more
34 than 18 months but less than 25 months before notice of eviction.

35 (B) No preadmission refund is required if preadmission fees
36 were paid 25 months or more before the notice of eviction.

37 (C) The preadmission refund required by this paragraph shall
38 be paid within 15 days of issuing the eviction notice. In lieu of the
39 refund, the resident may request that the licensee provide a credit

1 toward the resident's monthly fee obligation in an amount equal
2 to the preadmission fee refund due.

3 (7) If the resident gives notice five days before leaving the
4 facility, the licensee shall refund to the resident or his or her legal
5 representative a proportional per diem amount of any prepaid
6 monthly fees at the time the resident leaves the facility and the
7 unit is vacated. Otherwise the licensee shall pay the refund within
8 seven days from the date that the resident leaves the facility and
9 the unit is vacated.

10 (8) Within 10 days of all residents having left the facility, the
11 licensee, based on information provided by the resident or
12 resident's legal representative, shall submit a final list of names
13 and new locations of all residents to the department and the local
14 ombudsperson program.

15 (b) If seven or more residents of a residential care facility for
16 the elderly will be transferred as a result of the forfeiture of a
17 license, revocation of a license, or change in the use of the facility
18 pursuant to subdivision (a), the licensee shall submit a proposed
19 closure plan to the department for approval. The department shall
20 approve or disapprove the closure plan, and monitor its
21 implementation, in accordance with the following requirements:

22 (1) Upon submission of the closure plan, the licensee shall be
23 prohibited from accepting new residents and entering into new
24 admission agreements for new residents.

25 (2) The closure plan shall meet the requirements described in
26 subdivision (a), and describe the staff available to assist in the
27 transfers. The department's review shall include a determination
28 as to whether the licensee's closure plan contains a relocation
29 evaluation for each resident.

30 (3) Within 15 working days of receipt, the department shall
31 approve or disapprove the closure plan prepared pursuant to this
32 subdivision, and, if the department approves the plan, it shall
33 become effective upon the date the department grants its written
34 approval of the plan.

35 (4) If the department disapproves a closure plan, the licensee
36 may resubmit an amended plan, which the department shall
37 promptly either approve or disapprove, within 10 working days
38 of receipt by the department of the amended plan. If the department
39 fails to approve a closure plan, it shall inform the licensee, in
40 writing, of the reasons for the disapproval of the plan.

1 (5) If the department fails to take action within 20 working days
2 of receipt of either the original or the amended closure plan, the
3 plan, or amended plan, as the case may be, shall be deemed
4 approved.

5 (6) Until such time that the department has approved a licensee's
6 closure plan, the facility shall not issue a notice of transfer or
7 require any resident to transfer.

8 (7) Upon approval by the department, the licensee shall send a
9 copy of the closure plan to the local ombudsperson program.

10 (c) (1) If a licensee fails to comply with the requirements of
11 subdivision (a), and if the director determines that it is necessary
12 to protect the residents of a facility from physical or mental abuse,
13 abandonment, or any other substantial threat to health or safety,
14 the department shall take any necessary action to minimize trauma
15 for the residents. The department shall contact any local agency
16 that may have placement or advocacy responsibility for the
17 residents, and shall work with those agencies to locate alternative
18 placement sites, contact relatives or other persons responsible for
19 the care of these residents, provide onsite evaluation of the
20 residents, and assist in the transfer of residents.

21 (2) The participation of the department and local agencies in
22 the relocation of residents from a residential care facility for the
23 elderly shall not relieve the licensee of any responsibility under
24 this section. A licensee that fails to comply with the requirements
25 of this section shall be required to reimburse the department and
26 local agencies for the cost of providing the relocation services. If
27 the licensee fails to provide the relocation services required in
28 subdivisions (a) and (b), then the department may request that the
29 Attorney General's office, the city attorney's office, or the local
30 district attorney's office seek injunctive relief and damages in the
31 same manner as provided for in Chapter 5 (commencing with
32 Section 17200) of Part 2 of Division 7 of the Business and
33 Professions Code.

34 (d) A licensee who fails to comply with requirements of this
35 section shall be liable for the imposition of civil penalties in the
36 amount of one hundred dollars (\$100) per violation per day for
37 each day that the licensee is in violation of this section, until such
38 time that the violation has been corrected. The civil penalties shall
39 be issued immediately following the written notice of violation.
40 However, if the violation does not present an immediate or

1 substantial threat to the health or safety of residents and the licensee
2 corrects the violation within three days after receiving the notice
3 of violation, the licensee shall not be liable for payment of any
4 civil penalties pursuant to this subdivision related to the corrected
5 violation.

6 (e) A resident of a residential care facility for the elderly covered
7 under this section, may bring a civil action against any person,
8 firm, partnership, or corporation who owns, operates, establishes,
9 manages, conducts, or maintains a residential care facility for the
10 elderly who violates the rights of a resident, as set forth in this
11 section. Any person, firm, partnership, or corporation who owns,
12 operates, establishes, manages, conducts, or maintains a residential
13 care facility for the elderly who violates this section shall be
14 responsible for the acts of the facility's employees and shall be
15 liable for costs and attorney's fees. Any such residential care
16 facility for the elderly may also be enjoined from permitting the
17 violation to continue. The remedies specified in this section shall
18 be in addition to any other remedy provided by law.

19 (f) This section shall not apply to a licensee that has obtained
20 a certificate of authority to offer continuing care contracts, as
21 defined in paragraph (8) of subdivision (c) of Section 1771.

22 SEC. 3. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.